

Tab 28



**Renewable Energy Grant Agreement**

Between

**New Jersey Board of Public Utilities**

and

**Ocean Energy Corp.**

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**Award Number**  
**P17646**





**THIS AGREEMENT** ("Agreement") is entered into between the State of New Jersey, Board of Public Utilities, whose address is Two Gateway Center, Newark, New Jersey 07102 ("Board," "BPU," "State," or "State of New Jersey"); and Ocean Energy Corp., Inc. ("Ocean" or Grantee), whose address is P.O. Box 207, Belford, NJ 07718, to provide for the terms under which the Grantee shall receive grant funds pursuant to BPU Order, Docket No. E006020116 that approved the awarding of funds related to the Grantee's landfill gas to energy project described herein.

**WHEREAS**, BPU Order, Docket No. E006020116 ("Order"), dated January 25, 2007, approved grant funding in the amount of \$1.5 million (the "REAP Funds") for the landfill gas to energy project to be located at the Ocean County Landfill Facility (the "Project"); and

**WHEREAS**, the Grantee submitted a proposal to BPU for the construction of Ocean County landfill gas to energy project from BPU's Renewable Energy Advanced Power ("REAP") Program pursuant to the provisions of the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 et seq. (the "Act"); and

**WHEREAS**, REAP funds provided by the BPU for the Project are established to encourage the development of renewable energy projects to provide for alternate electrical supply technologies which are viable alternatives to traditional electrical supply methods; and

**NOW, THEREFORE**, the parties, acknowledging the foregoing and intending to be mutually bound, hereby covenant and agree as follows:

**1.0 Project**

The Project shall be designated as the Ocean County Landfill Gas to Energy Project, and for purpose of this Agreement, shall have the reference BPU Docket No. E006020116.

**2.0 General Scope of Agreement**

This Agreement is entered into in accordance with and pursuant to the BPU Order, Docket No. E006020116. The BPU agrees to provide \$1.5 million in REAP funds to the Grantee to be paid by the BPU to Grantee within the State of NJ Prompt Payment Act guidelines upon receipt of final New Jersey Department of Environmental Protection permit approvals and submission and BPU's Office of Clean Energy approval of qualified costs for the Project.

**3.0 Bonding and Insurance**

The Grantee shall maintain in force for the term of this Agreement the following minimum types and levels of coverage. These coverages shall be maintained either through insurance policies from insurance companies licensed to do business in the State of New Jersey or through formal, fully funded self-insurance programs authorized by law and acceptable to the BPU. Unless current documentation is already on file with the BPU, the Grantee must submit certificates of insurance, documentation of self-insurance, or both to the Board within thirty (30) days after the effective date of this Agreement. No payments may be made under this Agreement until acceptable documentation of insurance coverage is received. Each certificate shall certify that the coverage shall not be canceled for any reason except after thirty (30) days written notice to the BPU. Each certificate shall also name the State of New Jersey and State employees and the New Jersey Economic Development Authority ("NJEDA") and its employees (collectively referred to herein as "State Entities") and as additional insureds to the fullest possible extent of the coverage. The minimum required



coverages are:

- A. comprehensive general liability policy as broad as the standard coverage form currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of the coverage. The policy shall include an endorsement for contractual liability and shall name the State Entities as additional insureds. The policy shall also include an endorsement for products liability. Limits of liability shall not be less than \$500,000 per person and \$1 million per occurrence for personal injury liability and \$250,000 per occurrence for property damage liability,
- B. comprehensive automobile liability policy covering owned, non-owned, and hired vehicles with minimum limits of \$500,000 per person and \$1 million per occurrence for property damage liability, and worker's compensation insurance as required by the laws of the State of New Jersey and employer's liability insurance with a limit of not less than \$100,000.

#### **4.0 Availability of Funds**

The Grantee shall recognize and agree that both the initial provision of funding under the Agreement is expressly dependent upon the availability to the BPU of funds appropriated by the State Legislature from State and/or Federal revenue or such other funding sources as may be applicable. A failure of the BPU to make any payment under this Agreement or to observe and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the BPU or an event of default under the Agreement and the BPU shall not be held liable for any breach of the Agreement because of the absence of available funding appropriations. In addition, future funding shall not be anticipated from the BPU beyond the duration of the award period set forth in the Grant/Loan Agreement and in no event shall the Agreement be construed as a commitment by the BPU to expand funds beyond the termination date set in the Grant/Loan Agreement.

#### **5.0 Method of Payment**

- A. Payment under this Agreement will be made upon submission by the Grantee of a properly executed State invoice form (available from the Board), and all invoices, bills, and other documents necessary to justify the payment. This form must also be accompanied by a certification from the Grantee that all procurements for which payment is requested have been made in accord with federal OMB Circulars A-102 or A-110 and the appropriate federal common rule, whichever would be applicable under federal law, and in accord with all applicable State laws and have been made during the work period.
1. If Attachment B-2, Approved Advance Payment, provides for a justification of an advance payment and if Section III (A) of Attachment A, Additional Provisions and Special Modifications, so provides, an initial advance payment will be made to the Grantee upon receipt by the Board of a properly executed copy of this Agreement, signed by an appropriate officer of the Grantee organization, together with a properly executed invoice form.



2. Progress payments shall be made by the Board on a periodic basis as prescribed in Section III.B of Attachment A, Additional Provisions and Special Modifications. Such payments shall be issued only upon receipt of the required financial and narrative reports described in Section 31.0 of this Agreement, Financial and Performance Reporting. Payment shall be made either in fixed amounts as determined by the Board to be reasonable to maintain an appropriate level of services or in the form of reimbursement of actually reported expenditures as indicated in Section III of Attachment A, Additional Provisions and Special Modifications.
3. If Section III of Attachment A, Additional Provisions and Special Modifications, so provides, a portion of the grant will be withheld pending receipt of the required final reports described in Section 34.0 of this Agreement, Grant Closeout Procedures.
4. The Board shall withhold payment of any costs disallowed by the Board as improperly incurred under any provision of this Agreement.
5. Grantee may not use any grant funds to satisfy any obligation which arose outside the work period.
- B. If the grant covered by this Agreement includes federal funds, all invoices must be submitted by the Grantee and all payments must be made by the State no later than ninety (90) days after the end of the work period.

#### **6.0 Allowable Costs**

##### **A. Limitation on Use of Funds**

Grant funds must be used only for allowable costs.

##### **B. Applicable Cost Principles**

For each type of organization, there is a set of Federal principals for determining allowable costs. Allowable costs will be determined in accordance with applicable Federal cost principles specific to the organization incurring the costs (e.g. Federal OMB Circular A-87, A-122, A-21, etc.) and State requirements.

#### **7.0 Period of Availability of Funds**

The Grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

#### **8.0 Matching and Cost Sharing**

The Grantee shall be required to account to the satisfaction of the BPU for matching and cost sharing requirements of the grant in accordance with Federal and State requirements.



## **9.0 Program Income**

Project income must be accounted for as indicated in Section V of Attachment A, Additional Provisions and Special Modifications. "Project income" means gross income earned by the Grantee from grant-supported activities. Such earnings include, but are not limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights. In all cases, interest earned on advances of grant funds shall be remitted to the Board, except for interest earned on advances to instrumentalities of a state as provided by the Federal Intergovernmental Cooperation Act of 1968, P. L. 90-577.

## **10.0 Project Location**

The Project will be located at Route 70, Manchester Township, New Jersey at the Ocean County Landfill Facility.

## **11.0 Schedule**

This Project was completed in March 2007 and is currently operating.

## **12.0 Current Design**

The current design is producing electric capacity and energy for sale to the PJM wholesale market for sale to retail customers.

## **13.0 Approvals and Authorizations**

- A. Unless specifically stated otherwise, wherever this Agreement requires the approval or authorization of the Board, that approval or authorization must be given in writing by the President of the Board, by the authorized delegate who signed this Agreement, or by said delegate's successor or superior, if any.
- B. If the Grantee is a municipal or county government agency, the Grantee must submit with this Agreement a copy of an ordinance or resolution, duly enacted by the governing body of that municipal or county government agency or of the municipality or county and authorizing execution of this Agreement. If the Grantee is a corporation, the Grantee must submit with this Agreement a corporate resolution, duly adopted by its board of directors, board of trustees, or equivalent governing body, and authorizing execution of this Agreement. The Board will not make any payments until such ordinance or resolution is received.
- C. If the Grantee is a corporation or partnership, the Grantee must submit with this Agreement a disclosure of the names and addresses of any persons who own 10% or more of the firm's stock or interest.
- D. If the Grantee is a corporation incorporated outside of New Jersey, the Grantee must, as a condition of payment hereunder, obtain a certificate of authority to do business in New Jersey from the Secretary of State and file a copy of that certificate with the Grant Officer designated in Section XII of Attachment A, Additional Provisions and Special Modifications.





- E. If the Grantee is neither a government agency nor a corporation and if the Grantee has neither a residence nor a place of business in New Jersey, then the Grantee irrevocably appoints the President of the Board to receive process in any civil action which may arise out of or as a result of this Agreement. Within ten (10) days of receipt of any such process, the President shall transmit it by certified mail to the Grantee at the address shown in this Agreement.

#### **14.0 Access to Information**

In order to assist the BPU in its evaluation of renewable technologies in New Jersey, the Grantee shall make available to the BPU and any of its representatives, upon reasonable request to the Grantee, access to the facility as well as technical and operational information relating thereto.

- A. The Grantee in accepting this grant agrees to make available to the BPU, any Federal agency whose funds are expended in the course of this grant, or any of their duly authorized representatives, pertinent accounting records, books, documents and papers as may be necessary to monitor and audit Grantee's operations.
- B. All visitations, inspections and audits, including visits and requests for documentation in discharge of the BPU responsibilities, shall as a general rule provide for prior notice when reasonable and practical to do so. However, the BPU retains the right to make unannounced visitations, inspections, and audits as deemed necessary.
- C. The BPU reserves the right to have access to records of any Subgrantees and requires the Grantee to provide for BPU access to such records in any grant with the Subgrantee.
- D. The BPU reserves the right to have access to all work papers produced in connection with audits made by the Grantee or independent certified public accountants, registered municipal accountants or licensed public accountants hired by the Grantee to perform such audits.

#### **15.0 Financial Management System**

- A. The Grantee shall be responsible for maintaining an adequate financial management system and will immediately notify the BPU when the Grantee cannot comply with the requirements established in this Section of the grant.
- B. The Grantee's financial management system shall provide for:

- 1. Financial Reporting:

- Accurate, current, and complete disclosure of the financial results of each grant in conformity with general accepted principles of accounting, and reporting in a format that is in accordance with the financial reporting requirements of the grant.

- 2. Accounting Records:

- Records that adequately identify the source and application of funds for BPU-supported activities. These records must contain information pertaining to grant



awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures and income.

**3. Internal Control:**

Effective internal and accounting controls over all funds, property and other assets. The Grantee shall adequately safeguard all such assets and assure that they are used solely for authorized purposes.

**4. Budget Control:**

Comparison of actual expenditures or outlays with budgeted amounts for each grant. Also, the relationship of the financial information with performance or productivity data, including the development of unit cost information required by the BPU.

**5. Allowable Cost:**

Procedures for determining reasonableness, allowability, and allocability of costs generally consistent with the provisions of Federal and State requirements.

**6. Source Documentation:**

Accounting records that are supported by source documentation.

**7. Cash Management:**

Procedures to minimize the time elapsing between the advance of funds from the BPU and the disbursement by the Grantee, whenever funds are advanced by the BPU.

C. The BPU may require the submission of a "Statement of Adequacy of the Accounting System," as provided in Attachment A, Section VI of this Agreement.

D. BPU may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to the award. If the BPU determines that the Grantee's accounting system does not meet the standards described in paragraph B above, additional information to monitor the grant may be required by the BPU upon written notice to the Grantee, until such time as the system meets with BPU approval.

**16.0 Monitoring of Program Performance**

A. The Grantee shall continually monitor its performance under this Agreement to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved as applicable and as defined in Attachments D, Scope of Services; D-1, Project Requirements; and D-2, Grantee's Proposal.



- B. The Grantee shall inform the Board as soon as possible if any of the following types of conditions affect Project objectives and performance and shall describe the action taken, or contemplated, and the BPU assistance needed, if any, to respond to any such condition:
1. problems, delays, or adverse conditions which will materially affect the ability to attain project objectives, prevent the meeting of time schedules and goals, or preclude the completion of Project work units or Agreement tasks within established time periods and
  2. favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more project work units or completing more Agreement tasks than originally projected.
- C. The BPU may, at its discretion, make site visits to:
1. review Project accomplishments and management control systems,
  2. audit the financial records pertaining to this Agreement, and
  3. provide such technical assistance as may be required.
- D. If the Grantee is not performing satisfactorily, the BPU may require remedial measures deemed necessary to fulfill the Project requirements, including requiring the Grantee to obtain additional BPU approvals before proceeding or requiring the Grantee to obtain outside technical or managerial assistance.

#### **17.0 Modification, Waiver, or Amendment**

No provision of this Agreement may be modified, waived, or amended, except by written instrument executed by each of the parties hereto.

#### **18.0 Assignability**

The Grantee shall not subcontract any of the work or services covered by this grant, nor shall any interest be assigned or transferred except as may be provided for in this grant or with the express written approval of the BPU.

#### **19.0 Compliance with Existing Laws**

The Grantee must comply with all local, state, and federal laws, rules and regulations applicable to this contract and/or services performed hereunder. Failure to comply with the laws, rules and regulations shall be grounds for termination of this grant. Specifically,

A. All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained with N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder; and

B. The Grantee must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.



## **20.0 Governing Law of Contracts/Orders**

It is agreed and understood that any contracts and/or orders placed or entered into as a result of this Agreement shall be governed and construed and the rights and obligations of the parties shall be determined in accordance with the laws of the State of New Jersey.

## **21.0 Applicability of Act**

The Grantee agrees and acknowledges that this Agreement and the Grant shall be and are subject to, governed by, and enforced in accordance with, all the terms, conditions and requirements of the Act, as same may from time to time be amended, the provisions of which are hereby incorporated herein in their entirety as if set forth at length.

## **22.0 Audit Requirements**

This grant is covered by the audit requirements of the BPU of the Treasury Circular Letter 04-04-OMB, Single Audit Policy for Recipients of Federal Grants, State Grants and State Aid.

## **23.0 Release and Indemnification**

The Grantee covenants and agrees that BPU, its members, agents, servants, officers or employees and NJEDA, its members, agents, servants, officers or employees shall not be liable for: (1) any loss, damage, or injury to, or death of, any person occurring at or about or resulting from the Project; (2) any damage or injury to the persons or property of Grantee, or its officers, agents, servants or employees, or any other person who may be about the Project, (other than if caused BPU or its members, officers, agents, servants or employees or the NJEDA or its members, officers, agents, servants or employees); or (3) any costs, expenses, legal fees or damages incurred as a result of any lawsuit commenced because of action taken in good faith by BPU or NJEDA in connection with the Project. Grantee shall indemnify, protect, defend and hold BPU, the NJEDA, the State of New Jersey, their respective members, agents, servants, officers and employees (each an "Indemnified Party"), harmless from and against any and all such losses, damages, injuries, costs, legal fees or expenses and (except for claims, demands, suits, actions or other proceedings brought against an Indemnified Party resulting from willful or wanton misconduct of such Indemnified Party) from and against any and all claims, demands, suits, actions or other proceedings whatsoever, brought by any person or entity whatsoever, (except Grantee) and arising or purportedly arising from this Agreement or any transaction contemplated in any documents, or from the construction, ownership and operation of the Project. The Grantee's liability under this Agreement shall continue after the termination of this Agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

## **24.0 Special Grant Conditions For "High Risk" Grantees**

- A. A Grantee may be considered "high risk" if the BPU determines that a Grantee:
  - 1. Has a history of unsatisfactory performance.
  - 2. Is not financially stable.





3. Has a financial management system which does not meet the standards set forth in Section 15.0.
4. Has not conformed to terms and conditions of previous awards.
5. Is otherwise not responsible; and the BPU determines that an award will be made; special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

**B. Special conditions or restrictions may include:**

1. Payment on a reimbursement basis.
2. Withholding authority to proceed to the next phase until receipt or evidence of acceptable performance within a given funding period.
3. Requiring additional, more detailed financial reports.
4. Additional project monitoring.
5. Requiring the Grantee to obtain technical or management assistance.
6. Establishing additional prior approvals.

**C. If the BPU decides to impose such conditions, the BPU official will notify the Grantee as soon as possible, in writing, of:**

1. The nature of the special conditions/restrictions.
2. The reason(s) for imposing the special conditions.
3. The corrective actions that must be taken before the special conditions will be removed by the BPU and the time allowed for completing the corrective actions.
4. The method of requesting reconsideration of the conditions/restrictions imposed.

**25.0 Project Changes**

The Grantee shall notify the BPU in writing of any material changes to the Project. The BPU may, in its sole discretion, approve or disapprove the changes to the Project. Upon disapproval of the changes to the Project, the BPU may reduce, terminate or recapture all or a portion of the REAP funds.

**26.0 Termination and Suspension of Grant**

- A. The following definitions shall apply for the purposes of this Section:**



1. Termination

The termination of a grant means the cancellation of assistance, in whole or in part, under a grant at any time prior to the date of completion.

2. Suspension

The suspension of a grant is an action by the BPU which temporarily suspends assistance under the grant pending corrective action by the Grantee or pending a decision to terminate the grant by the BPU.

3. Disallowed Costs

Disallowed costs are those charges to the grant which the BPU or its representatives shall determine to be beyond the scope of the purpose of the grant, excessive, or otherwise unallowable.

B. When the Grantee has failed to comply with grant award stipulations, standards, or conditions, the BPU may suspend the grant and withhold further payments; prohibit the Grantee from incurring additional obligations of grant funds pending corrective action by the Grantee; or decide to terminate the grant in accordance with paragraph C below. The BPU shall allow necessary and proper costs, which the Grantee could not reasonably avoid during the period of suspension, provided they meet Federal and State requirements.

C. The BPU may terminate the grant in whole or in part whenever it is determined that the Grantee has failed to comply with the conditions of the grant. The BPU shall promptly notify the Grantee in writing of the determination and the reasons for the termination together with the effective date. Payments made to the Grantee or recoveries by the BPU under the grant terminated for cause shall be in accord with the legal right and liability of the parties.

D. The BPU and the Grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and in case of partial terminations, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

E. The Grant Closeout procedures in Section 34.0 of the grant shall apply in all cases of termination of the grant.

**27.0 Interest on Advance Payments and Disallowed Costs**

A. Advance Payments: The Grantee is required to deposit any advance payments received hereunder in an interest bearing account. Any interest up to \$100 per year may be retained by the Grantee for documented administrative expenses. If this Agreement is federally funded, any interest above \$100 per year must be remitted on a quarterly



basis to the Board for return to the federal government. If this Agreement is funded by the State, interest above \$100 per year may be retained by the Grantee for purposes of this Agreement or shall be remitted to the Board as indicated in Section XI of Attachment A, Additional Provisions and Special Modifications.

- B. **Disallowed Costs:** Where the Grantee has been reimbursed costs that are subsequently determined to be Disallowed Costs as defined in Section 26.0 of this Agreement, the Grantee shall return the funds to the BPU or its representative no later than thirty (30) days after the request. Where the Grantee fails timely to return the funds or appeals the disallowed costs, an interest charge as indicated in Section XII of Attachment A, Additional Provisions and Special Modifications, shall be charged on the funds beginning thirty (30) days from the date the Grantee was notified of the debt. If the Grantee is successful on appeal, the accrued interest will be canceled.

## **28.0 Budget Revision and Modification**

- A. This Section sets forth criteria and procedures to be followed by the Grantee in reporting deviations from the approved budget and in requesting approvals for budget revisions and modification. Revisions and modifications to this grant must be requested by the Grantee and approved by the BPU in writing.
- B. If it desires to amend this Agreement, the Grantee must submit a written request to the Grant Officer designated in Section XII of Attachment A, Additional Provisions and Special Modifications. Any amendment, whether requested by the Grantee or the Board, must be documented by completion of the Board's amendment form (BPU-076). The completed amendment form must be formally executed by authorized representatives of both parties in the same manner as this Agreement, unless the amendment being documented is of the type described in paragraph C, D, or E of this Section 28.0, Budget Revision and Modification. If the amendment is of the type described in paragraph C, D, or E below, the Grant Officer may execute the amendment form for the State by signing it in the designated place, and no formal execution by authorized representatives of the parties will be required. As a nonrestrictive example only, if the Board requests and the Grantee consents to, any amendment to the scope of the services to be performed by the Grantee, including any increase in the amount of the approved budget, such amendment must be memorialized by a completed amendment form, formally executed by authorized representatives of both parties.
- C. The Grantee may obtain approval directly from the Grant Officer to transfer amounts of up to \$20,000 or 10% of the total grant amount, whichever is less, from one direct cost category to another or from the indirect cost category to a direct cost category, as long as this transfer does not result in any change in the Project's scope, work period, objective, or deliverables. If the total grant amount is less than \$25,000, the Grant Officer may disregard the 10% limitation and approve transfers of up to \$2,500.
1. "Indirect costs" are those incurred for a common or joint purpose benefiting more than one cost objective and not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. "Direct costs" are those which can be identified specifically with a particular cost objective.
  2. The amendment form documenting any budget revision shall clearly show and justify each change in each cost category, either on the form or on an attachment to it.



- D. The Board may reduce the grant budget and the scope of services so that they fairly reflect anticipated Project expenditures and progress if:
1. The Board notifies the Grantee, that the Grantee is making Project expenditures or progress at a rate which, in the judgment of the Board, will result in substantial failure to expend the grant or to fulfill the purposes of this Agreement;
  2. The Board notifies the Grantee at least thirty (30) days in advance of any reduction;
  3. after consultation, the Grantee is unable to develop to the satisfaction of the Board a plan to rectify its low level of project expenditures or progress; and
  4. The Board considers the Grantee's fixed costs when making any reduction.
- E. The Grant Officer may approve no-cost time extensions to the work period or the due date of the final report in increments of six months or less but not beyond the expiration date, if any, provided in this Agreement, Section 25.0, Project Changes. Written justification and documentation evidencing the need to extend the work period or the due date of the final report must be submitted to the Grant Officer at least thirty (30) days in advance of the scheduled end of the work period. The Grant Officer shall decide whether to grant the extension. The amendment form documenting any no-cost time extension shall clearly show and justify the change, either on the form or on an attachment to it.

#### **29.0 Property Management Standards**

Property furnished by the BPU or acquired in whole or in part with Federal or BPU funds or whose cost was charged to a project supported by Federal or BPU funds shall be utilized and disposed of in a manner generally consistent with State and Federal requirements.

#### **30.0 Procurement Standards**

Procurement of supplies, equipment, and other services with funds provided by this grant shall be accomplished in a manner generally consistent with Federal and State requirements.

Adherence to the standards contained in the applicable Federal and State laws regulations does not relieve the Grantee of the contractual responsibilities arising under its procurements. The Grantee is the responsible authority, without recourse to the Department, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurement entered in support of a grant.

#### **31.0 Financial and Performance Reporting**

- A. The grant budget as used in this Section means the approved financial plan to carry out the purpose of the grant. This plan is the financial representation of the project or program as approved during the grant application and award process. The Approved Budget is contained in Attachment B.





- B. The Grantee is required to submit a final report at the conclusion of the grant.
- C. The Grantee shall submit interim expenditure reports comparing actual expenditures with the approved budget.
- D. The Grantee shall submit interim performance reports as prescribed by the BPU; however, reports shall not be required more frequently than quarterly or less frequently than annually.
- E. The Grantee shall submit annual reports.
- F. Extensions to reporting due dates may be granted upon written request to the BPU.
- G. If reports are not submitted as required, the BPU may, at its discretion, suspend payments on this grant. The State of New Jersey may, at its discretion, take such action to withhold payments to the Grantee on this or any grant with other State agencies until the required reports have been submitted.

### **32.0 Record Retention**

- A. Except as otherwise provided, financial and programmatic records, supporting documents, statistical records and all other records pertinent to the grant shall be retained for a period of seven (7) years, unless Federal or State funding statutes require longer periods or unless directed to extend the retention by the BPU.
  - 1. If any litigation, claim, negotiation, action or audit involving the records is started before the expiration of the seven year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular seven (7) year period, whichever is later unless otherwise directed by the BPU.
  - 2. Records for nonexpendable property acquired with BPU funds shall be retained for seven (7) years after its final disposition, unless otherwise provided or directed by the BPU.
- B. For Federal and State purposes (unless otherwise provided):
  - 1. General – The retention period starts from the date of submission of the final expenditure report, or for grants that are renewed annually, from the date of submission of the annual financial report.
  - 2. Real Property and Equipment – The retention period for real property and equipment records starts from the date of the disposition, replacement or transfer at the direction of the BPU.
- C. The BPU may request for transfer of certain records to its custody from the Grantee when it determines that the records possess long-term retention value and will make arrangements with the Grantee to retain any records that are continuously needed for joint use.



### **33.0 Enforcement**

#### **A. Remedies for Noncompliance**

If a Grantee materially fails to comply with the term of an award, Whether stated in a State or Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the BPU, after providing prior written notice to the Grantee of the noncompliance and remedy(ies), may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending corrections of the deficiency by the Grantee or take more severe enforcement action.
2. Disallow all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the current award for the Grantee's program.
4. Withhold further awards for the program.
5. Request the balance of grant funds to be returned and/or seek reimbursement for funds expended that were not in compliance with the terms and conditions of the Agreement.
6. Take other remedies that may be legally available.

#### **B. Hearings, Appeal**

In taking an enforcement action, the BPU may provide the Grantee an opportunity for such hearing, appeal or other administrative proceeding to which the Grantee is entitled under any statute or regulation applicable to the action involved.

#### **C. Effects of Suspension and Termination**

Costs incurred by the Grantee, resulting from obligations incurred by the Grantee during a suspension or after termination of an award, are not allowable to be applied against the grant unless the BPU expressly authorizes them in the notice of suspension or termination or subsequently. Other Grantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the costs result from obligations which were properly incurred by the Grantee before the effective date of suspension or termination, and are noncancellable.

#### **D. Relationship to Debarment and Suspension**

The enforcement remedies identified in this Section, including suspension and termination, do not preclude the Grantee from being subject to State and Federal debarment and suspension procedures.



#### **34.0 Grant Closeout Procedures**

The closeout of this Agreement shall mean the process by which the Board determines that all applicable administrative actions and all required work have been completed by the Grantee. This process shall include the steps enumerated below.

- A. The Grantee shall submit a final report as provided in Section VII of Attachment A, Additional Provisions and Special Modifications. The Board may permit extensions when requested in writing by the Grantee.
- B. The Grantee shall, together with the submission of the final report; refund to the Board any cash advanced but not committed to payment of eligible project costs in accordance with the Attachment B, Approved Project Budget.
- C. The Grantee shall refund to the Board any funds spent on costs which are disallowed by the Board. Such refund shall be made within thirty (30) days after the request.
- D. In the event a final audit has not been performed prior to the closeout of this Agreement, the Board retains the right to recover any appropriate amount after fully considering any recommendation on disallowed costs resulting from the final audit.
- E. The Grantee shall account for any property acquired with grant funds or received from the Board in accordance with Section 29.0 of this Agreement, Property Management Standards.
- F. The BPU retains the right to request any additional information necessary to close out this Agreement and may retain any final grant payment until the closeout procedure is completed.

#### **35.0 Miscellaneous Provisions**

- A. Governing Law: It is agreed and understood that this Agreement shall be governed and construed, and the rights and obligations of the parties hereto shall be determined, in accordance with the laws of the State of New Jersey including but not limited to the Contractual Liability Act, N.J.S.A 59:13-1 et seq.
- B. Conflict of Terms: In the event of any conflict, the order of precedence shall be (1) the terms and conditions of this Agreement; (2) any State Agency application form or specific correspondence describing the Project and/or soliciting a Grantee's proposal; and (3) the Grantee's proposal (D-2).

NOTE: The only exception to the above is that consistency with rules and regulations promulgated pursuant to the State Program's enabling legislation shall always have precedence in any conflict with the terms and conditions of the Agreement.

- C. Dispute Resolution: Consistent with the Contractual Liability Act, N.J.S.A 59:13-1 et seq., unless otherwise provided in this Agreement, all claims, counterclaims, disputes, and other matters in question between the State and the Grantee arising out of, or relating to, this Agreement or the breach of it will proceed as follows:



1. The dispute shall initially be submitted by either party for resolution via administrative proceedings conducted by the BPU.
2. If there is no mutually agreeable resolution after administrative recourse is exhausted, the matter may then proceed to litigation. Any litigation must be submitted to, and heard by, a court of competent jurisdiction within the State of New Jersey.

**D. Performance:** The Grantee warrants that it is aware of the work required to be performed under this Agreement, that it has the capabilities and credentials required by the Agreement, and that it will faithfully perform the work and abide by the terms, conditions, and other requirements of this Agreement.

**E. Disclaimer of Agency Relationship:** The Grantee's status shall be that of an independent principal and not as an agent or employee of the State. Nothing contained in the Agreement shall be construed to create, either expressly or by implication, the relationship of agency between the State and the Grantee or its subcontractors.

**F. Computation of Time:** When the Agreement refers to a period of time in terms of days, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. In computing a period of time of less than seven days, Saturday, Sunday, and legal holidays shall be excluded.

**G. Intellectual Property Rights:** The Grantee retains title and ownership of the intellectual property. The State retains a non-exclusive, irrevocable, perpetual, fully paid, enterprise license to use, execute, reproduce, modify and enhance the intellectual property for the State's internal use without any payment to Grantee for such right. In addition, the license granted to the State allows the State to prepare derivative works based on the intellectual property that is the subject of the license.

**H. Captions and Headings:** Captions and headings used in this agreement are for convenience of reference only and shall in no way be deemed to define, limit, explain, or amplify any term or provision.

**I. Severability:** In case any term or provision of this agreement shall be held invalid, illegal, or unenforceable, in whole or in part, neither the validity of any remaining part nor the validity of any other term or provision shall in any way be affected by such holding.

**J. Entire Agreement:** The parties understand and agree that all prior understandings and agreements between them regarding performance of the obligations described herein are merged into this Agreement which supersedes all such prior understandings and agreements. Neither party enters into this Agreement in reliance on any statement or representation of the other which is not reiterated herein.

**K. Successor and Assigns:** This Agreement shall be binding upon any successors or assigns of the Grantee. The State may, in its sole discretion, reject any proposed successor or assign of the Grantee.





- L. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall constitute an original instrument and all of which taken together shall constitute one and the same instrument.
- M. Notices: All notices, certificates, and other documents (a "notice") to be given by one party to the other shall be in writing and shall be delivered to the other party. Any such notice shall be delivered to the address of the Grantee or the BPU shown in this Agreement by overnight courier service or by regular first class, certified, or registered mail, postage prepaid. If mailed, said notice shall be deemed to have been received five (5) days after its deposit in the United States Mail; and if given otherwise, said notice shall be deemed to have been received when delivered to the party to whom it is addressed.
- N. Waiver of Breach: The waiver by either party of any breach of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision.
- O. Gender and Number: Use of the singular or plural includes the other and use of any gender includes all genders, as the context requires or permits.
- P. Waiver of Jury Trial: In the event of litigation, Grantee waives any right it may have to a trial by jury.

**36.0. Notices**

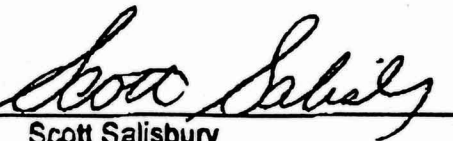
If to the Grantee: Scott Salisbury  
Ocean Energy Corp., Inc.  
2498 Route 70  
Manchester, NJ 08759  
248-380-3920  
248-380-2038 fax  
Scott.salisbury@landfillenergy.com

If to the BPU: Michael Winka, Director  
Office of Clean Energy  
New Jersey Board of Public Utilities  
44 S. Clinton Avenue  
PO Box 350  
Trenton, NJ 08625-0350  
609 777-3330 (fax)



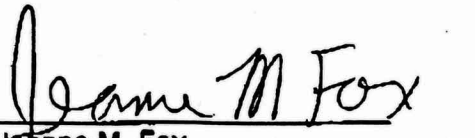
**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year written below:

OCEAN ENERGY CORP., INC.

By:   
Scott Salisbury  
President

Date: 1/24/08

NEW JERSEY BOARD OF PUBLIC UTILITIES

By:   
Jeanne M. Fox  
President NJ Board of Public Utilities

Date: 2/8/08



Attachment A  
GRANT AGREEMENT  
BETWEEN

OCEAN ENERGY CORP., INC.  
AND  
THE STATE OF NEW JERSEY  
BY AND FOR  
THE BOARD OF PUBLIC UTILITIES

GRANT IDENTIFIER: P17646

ADDITIONAL PROVISIONS AND SPECIAL MODIFICATIONS

This Attachment A adds the terms, conditions, requirements, and provisions specified in Sections I through XI below, and makes the modifications specified in Section XII below, to the preceding General Terms and Conditions of the agreement between Ocean Energy Corp., Inc. and the State of New Jersey, by and for the BPU.

**I. Insurance** (See Section 3.0 of this Agreement, Insurance.)

A. The Grantee maintains and must continue to maintain the required insurance coverages as follows:

1. comprehensive general liability  
☒ insurance  
☐ self insurance  
☐ not required
2. automobile liability  
☒ insurance  
☐ self-insurance  
☐ not required
3. worker's compensation  
☒ insurance  
☐ self-insurance  
☐ not required
4. employer's liability  
☒ insurance  
☐ self-insurance  
☐ not required

B. Certificates of insurance or documentation of self-insurance

- ☐ is on file with the Board.  
☒ will be forthcoming within 30 days after the effective date of this agreement.  
☐ other (explain) \_\_\_\_\_

**NOTE:** No payment can be made until the Board has received acceptable documentation of these required coverages.

**II. Availability of Funds** (See Section 4.0 of this Agreement, Availability of Funds.)

Based upon funds available to the Board in the State's fiscal year, the Agreement (the sum of the State, the federal, and if through the State treasury, the other amounts, shown as components of the grant amount in Section 2 of this Agreement) is

- ☒ fully funded.  
☐ partially funded in the amount of \$ \_\_\_\_\_.  
☐ not applicable.

**III. Method of Payment** (See Section 5.0 of this Agreement, Method of Payment.)



A. Advance payment, if justified and itemized in Attachment B-2, Approved Advance Payment, is

- ☐ authorized for \$\_\_\_\_\_.  
☒ not applicable.

B. Progress payments

- ☐ shall be made on a \_\_\_\_\_ basis for \$\_\_\_\_\_ per payment.  
(e.g. mo./qtr./deliverable)
- ☐ shall be based on actual expenditures submitted on a monthly basis accompanied by receipts.  
(e.g. mo./qtr.)
- ☐ shall be made on submission of deliverables in accordance with the project specifications and requirements.  
☒ are not applicable.

C. Final payment of \$1.5 million

(amount or description)

- ☐ shall be withheld pending receipt of all final reports.  
☐ is not applicable.  
☒ (other, specify) shall be made within the State of New Jersey Prompt Payment Act guidelines upon receipt of final New Jersey Department of Environmental Protection permit approvals and submission and BPU approval of qualified costs for the Project.

NOTE: No payment can be made unless a proper state invoice is submitted with appropriate justification, receipts, etc. and unless any required expenditure and performance reports are submitted.

**IV. Matching and Cost Sharing Requirements** (See Section 8.0 of this Agreement, Matching and Cost Sharing Requirements.)

- ☐ The Grantee shall provide the matching or cost sharing amounts indicated in Section 2 of the This Agreement and described further in Attachment B, Approved Project Budget.  
☒ Matching and cost sharing requirements do not apply.

**V. Project Income** (See Section 9.0 of this Agreement, Program Income.)

A. Royalties, if any, received as a result of copyrights or patents produced under this agreement shall be

- ☐ paid to the Board.  
☐ retained by the Grantee.  
☒ not applicable.

B. Other project income, if any, as defined in Section 9.0 of this Agreement, Program Income, shall be

- ☐ added to funds committed to the project by the Board and used to further eligible project objectives.  
☐ deducted from the total project costs for the purpose of determining the net costs on which the Board shall base grant payments.  
☐ paid to the Board.  
☐ retained by the Grantee.  
☒ not applicable.

**VI. Certification of Adequacy of Accounting System** (See Section 15.0 of this Agreement, Financial Management System.)

A. A statement attesting to the adequacy of the Grantee's accounting system in accordance with the standards set forth in Section 15 of this Agreement, Financial Management System,

- ☐ must be completed by the Chief Financial Officer of the Grantee.  
☒ may be required by BPU.





- B. Financial reports shall be prepared in a manner consistent with the Grantee's normal accounting records, which are kept on

- ☒ a cash basis.  
☐ an accrual basis.  
☐ modified accrual basis.  
☐ (other, specify) \_\_\_\_\_.

**VII. Financial and Performance Reporting** (See Sections 15.0 and 16.0 of this Agreement, Financial Management System and Monitoring of Program performance, respectively.)

- A. All financial reports must be certified by the Chief Financial Officer.
- B. Interim expenditure reports, including a completed copy of Attachment C, Expenditure Report, shall be submitted
- ☐ \_\_\_\_\_, no later than \_\_\_\_\_ days immediately following the end of the period.  
(e.g. mo./qtr.)
- ☒ (other, specify) when project is completed, but no later than the due date of the final expenditure report.
- C. Performance reports shall be submitted on a annual basis. These reports should be submitted  
(e.g. qtr./annual)  
no later than 30 days after the end of each reporting period.
- D. A final expenditure report, including a completed copy of Attachment C, Expenditure Report, and a final performance report shall be submitted by the Grantee no later than 30 days after the Grantee's completion of all Agreement tasks, the expiration date of this Agreement, or the termination of this Agreement, whichever first occurs.

**VIII. Audit Requirements** (See Section 22.0 of this Agreement, Audit Requirements.)

- A. Under the federal Single Audit Act or the State Treasury Circular 04-04-OMB,
- ☐ this Agreement is subject to a single audit and will be audited as such on Grantee's fiscal year.  
☒ this Agreement is not subject to a single audit and shall be audited as indicated in paragraphs B and C below.
- B. If this Agreement is not subject to a single audit under paragraph A above,
- ☐ the Agreement shall otherwise be audited at the end of the work period.  
☒ the Agreement may otherwise be audited at the Board's discretion up to three years after the end of the work period.
- C. If this Agreement is audited under paragraph B above, the audit shall be conducted by
- ☐ State auditors.  
☐ Board internal auditors.  
☐ a CPA firm appointed by Board.  
☒ a CPA firm chosen by the Grantee.  
☐ (other, specify) \_\_\_\_\_.
- D. The Board's records show the Grantee's fiscal year ends on 12/31. The Grantee shall notify the Board immediately if this date is incorrect or is changed.
- E. Copies of all audit reports must be submitted to BPU, Office of Budget and Finance, 44 South Clinton Avenue, PO Box 350, Trenton, NJ 08625-0350 not later than nine (9) months after the close of the Grantee's fiscal year.

**IX. Agreement Amendment** (See Section 17.0 of this Agreement, Modification, Waiver or Amendment.)

All budget revisions and modifications must be submitted, in writing, to (name) Michael Winka, (title) Director or the successor to that position (the "Grant officer").

**X. Authorizations and Disclosures** (See Section 13.0 of this Agreement, Approvals and Authorizations.)



A. The Grantee is

- ☐ a local government agency.
- ☐ a New Jersey corporation.
- ☒ an out-of-state corporation.
- ☐ (other, specify) \_\_\_\_\_.

B. Appended hereto as Attachment E, Governing Body Resolution or Corporate Resolution, is

- ☐ a governing body resolution.
- ☒ a corporate resolution.
- ☐ no resolution.

C. A Grantee's Stockholder Disclosure Statement is

- ☒ submitted herewith.
- ☐ not applicable.

D. A certificate of authority for Grantee to do business in New Jersey

- ☒ will be submitted.
- ☐ is not applicable.

**NOTE:** No payment can be made until the Board has received any documents required under this Section X, Authorizations and Disclosures.

**XI** Interest (See Section 27.0 of this Agreement, Interest on Advance Payments and Disallowed Costs.)

A. Interest above \$100 per year on advance payment of State funds

- ☐ may be retained by the Grantee for documented purposes under this Agreement.
- ☐ shall be remitted to the Board on a quarterly basis.
- ☒ will not exist because no advance payment is authorized.
- ☐ (other, explain) \_\_\_\_\_.

**NOTE:** On federally funded grants, any interest above \$100 per year must be remitted on a quarterly basis to the Board for return to the federal government.

B. Interest on payments of disallowed costs not returned within 30 days of request shall accrue in favor of the State at the rate specified in the "Notice of Intent to Collect" document (ADM-182).

**XII** Modifications to General Terms and Conditions

The terms of this Agreement are changed, supplemented, or deleted ("modified") as specified in this Section XII, which supersedes inconsistent terms, conditions, requirements, or provisions contained elsewhere in this agreement. If all modifications do not fit on this page, the numeral "5" in the phrase "of 5" in the header of each page of this Attachment A must be changed to equal the total number of pages in this Attachment A, and each new page must be identified and successively numbered in the same manner as the first five pages.

- ☐ This Section XII does contain modifications to this Agreement, and this Attachment A now comprises \_\_\_\_\_ pages.
- ☒ This Section XII does not contain modifications to this Agreement.



Attachment B  
GRANT AGREEMENT  
BETWEEN

OCEAN ENERGY CORP., INC.  
AND  
THE STATE OF NEW JERSEY  
BY AND FOR  
THE BOARD OF PUBLIC UTILITIES

GRANT IDENTIFIER: \_\_\_\_\_

APPROVED PROJECT BUDGET

ACCOUNT DESCRIPTION	TOTAL BUDGET	FEDERAL	STATE	GRANTEE	OTHER
A. Personnel Costs	0.00	0.00	0.00	0.00	0.00
Salaries					
Fringe Benefits	0.00	0.00	0.00	0.00	0.00
B. Consultants and Subcontractors	\$196,053.94	0.00	0.00	0.00	0.00
C. Other Costs Specify: <u>See Appendix A</u> _____ _____ _____ _____	\$8,637,293.60	0.00	0.00	0.00	0.00
D. Audit	0.00	0.00	0.00	0.00	0.00
Subtotal Direct Costs	\$8,833,347.54	0.00	0.00	0.00	0.00
Less Program Income	0.00	0.00	0.00	0.00	0.00
Total Direct Costs	\$8,833,347.54	0.00	0.00	0.00	0.00
Indirect Costs	0.00	0.00	0.00	0.00	0.00
TOTAL PROJECT AMOUNT	\$8,833,347.54	0.00	0.00	0.00	0.00



The sums identified in the "Total Budget" column are itemized and justified in (check one or more as appropriate)

☐ Attachment D, Scope of Services, on page(s) \_\_\_\_.

☐ Attachment D-2, Grantee's Proposal, on page(s) \_\_\_\_.

☒ Attachment B-1, Itemization and Justification of Budget, comprising \_\_\_\_ pages.









**Attachment B-1  
GRANT AGREEMENT  
BETWEEN**

**OCEAN ENERGY CORP., INC.  
AND  
THE STATE OF NEW JERSEY  
BY AND FOR  
THE BOARD OF PUBLIC UTILITIES**

**GRANT IDENTIFIER: P17646**

**ITEMIZATION AND JUSTIFICATION OF BUDGET**

If neither Attachment D, Scope of Services, nor Attachment D-2, Grantee's Proposal, provides an itemization, explanation, and justification for the Approved Project Budget, they must be provided on this Attachment B-1, comprising 1 pages, including this page.

Attach BPU order





Agenda Date: 11/9/06  
Agenda Item: 1A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

**CLEAN ENERGY**

IN THE MATTER OF THE RENEWABLE ENERGY )  
ADVANCED POWER (REAP) PROGRAM WITH )  
WARREN COUNTY LANDFILL, LLC (WCLE) AND )  
WITH OCEAN COUNTY LANDFILL GAS TO )  
ENERGY PROJECT )

**ORDER**

**DOCKET NO.**  
**EO06020118 &**  
**EO06020116**

**(SERVICE LIST ATTACHED)**

**BY THE BOARD:**

This Order memorializes actions taken by the New Jersey Board of Public Utilities (Board) at its November 9, 2006 Agenda Meeting.

In October, 2003, the Office of Clean Energy (OCE) of the Board of Public Utilities (Board) issued a grant solicitation under the Renewable Energy Advanced Power (REAP) program. REAP is designed to facilitate the construction of distributive energy generation projects in New Jersey using renewable energy sources. Such renewable sources may include wind, solar, landfill and biomass gas, or fuel cells using renewable fuels. The OCE's objective in issuing this solicitation was to provide seed grants and access to capital that would make renewably powered electricity cost competitive with conventional power plants. The resulting diversity of power supply is expected to provide significant environmental benefits to the people of New Jersey and to encourage the development of a thriving renewable energy market in New Jersey.

Two of the grant applications received by OCE Staff are addressed herein. The first was from Warren County Landfill Energy LLC, jointly owned by Marina Energy LLC and DCO Energy, LLC (hereinafter WCLE). The second came from Ocean Energy Corp., Inc. (OECI), formed by Atlantic Pier Company, Inc. which is the parent of Ocean County Landfill Corporation, Inc. (OCLC), the owner and operator of the Ocean County Landfill (OCLC Landfill) in Manchester Township, NJ.



### Warren County Landfill Gas to Energy Project

This proposal involves the construction of two reciprocating internal combustion electrical generators fueled by renewable landfill gas. Electric capacity and energy will be produced for sale to the PJM wholesale market for sale to retail customers. The project will occupy approximately 12,600 square feet of land leased by WCLE adjacent to the existing landfill. The project will purchase landfill gas from the Pollution Control Financing Authority of Warren County, and has met or exceeded all applicable emissions standards required to obtain the requisite permits from the Department of Environmental Protection (DEP).

This project will be connected with an existing Jersey Central Power and Light Co. (JCP&L) 34.5kv transmission line located in the southern boundary of the landfill. The interconnection will consist of a new 34.5kv transmission line, to be constructed between the energy plant and the existing transmission line on landfill property. This interconnection will allow the project to sell wholesale energy to the PJM grid. Any necessary investments to ensure the adequacy of project interconnection will follow completion of a PJM feasibility study.

The project developers initially requested a REAP grant in the amount of \$1,537,759, or twenty percent of the total capital cost of \$7,688,794. At the request of the OCE, the Board Economist's Office reviewed the project's financial data and the parties subsequently agreed upon a reduced grant award of \$1.2 million, the amount for which approval is now sought. WCLE is borrowing the remaining money needed to finance the other project costs from South Jersey Industries, Inc. South Jersey Industries is the corporate parent of Marina Energy LLC., which jointly owns WCLE with DCO Energy, LLC.

### Ocean Energy Corporation Landfill Gas to Energy Project

This proposal involves the construction and operation of six 1600 kW internal combustion engines to be fueled by renewable landfill gas. Electric capacity and energy will be produced for sale to the PJM wholesale market for sale to a retail customer. The project has met all applicable emissions standards required by the DEP.

This project will be connected directly to Jersey Central Power and Light's (JCP&L) distribution system and the PJM Power Pool. The project will be able to sell capacity and energy to the wholesale market rather than using a net metering arrangement to offset the retail cost of loads at the facility. If a PJM facility study currently underway determines that the existing distribution circuit is adequate to interconnect the additional 9.6 MW of production without major modifications, this circuit will be used for the interconnection. If the PJM study determines that the distribution circuit does not provide adequate reliability, then a line extension will be installed. The facility owner will be responsible for the installation, operation and maintenance of all equipment on its side of the isolating disconnect switch.





When the proposal was originally submitted on December 12, 2003, the project developers requested a grant from the REAP Program in the amount of \$2.29 million to \$2.97 million, or twenty percent of the total qualified project cost, whichever is the lesser. The project developers subsequently revised that request downward to approximately \$2 million. After recommending this project for preliminary approval and consideration for funding, the OCE asked the Board Economist's Office to review the project financial data to determine whether the project could be cost effective without Clean Energy Program funds. The Economist's Office asked for and received additional project financial background data from OECl. Upon review, the Economist's Office recommended a reduced grant award. Ultimately it was agreed by both parties that a reduced grant award of \$1.5 million be recommended to the Board.

The developers did not request financing from the New Jersey Economic Development Authority (EDA) but plan to obtain the remainder of the financing using a \$6,040,000 loan through Comerica Bank.

Both projects will contribute to the goals and objectives established by the Legislature under the Electric Discount and Energy Competition Act of 1999 and the Governor's Renewable Energy Task Force, which calls for 300 MW of Class I renewable energy to be installed by 2008.

#### Discussion and Findings

In considering the eligibility of these projects for funding under this program, the Board looks first to the contribution they will make to distributed generation using renewable energy. These projects will utilize landfill gases to fuel generators and engines which would otherwise be fueled by non-renewable resources. Among these landfill gases is methane, which is known to be twenty-one times more potent a greenhouse gas than carbon dioxide. Capturing the landfill gas and burning it to produce electricity is considered a best-practice greenhouse gas mitigation technique for landfills. In addition as a pre-condition to receiving consideration for funding by this Board, these projects have received all applicable approvals from the DEP. Thus, the Board **FINDS** that these projects constitute distributed generation of renewable energy, and that their completion will further the environmental and economic goals of the Board through electricity cost containment, improved air quality and reduced greenhouse gas emissions, to the benefit on New Jersey citizens.


Upon consideration of the facts set forth above, the Board **FINDS** that a grant of \$1.2 million under the REAP program to the Warren County Landfill Gas to Energy Project is appropriate and a proper expenditure of the ratepayers' funds. The Board further **FURTHER FINDS** that funding in the amount of \$1.5 million for the Ocean Energy Corporation Gas to Energy Project is appropriate. Now, therefore, in accordance with the policy established by the Board and the approval of the Clean Energy Program fund payment policies and procedures, the Board **HEREBY AUTHORIZES** a grant of \$1.2 million to WCLE and a grant of \$1.5 million to OECl in accordance with relevant terms and conditions herein and in Department of Treasury approved contracts to be executed by the parties. The Board **FURTHER ORDERS** that letters under the Board President's signature be sent to the New Jersey Economic Development Authority authorizing its

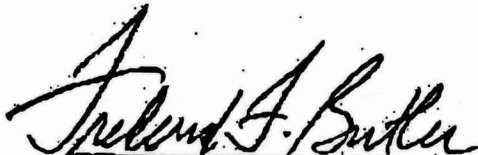


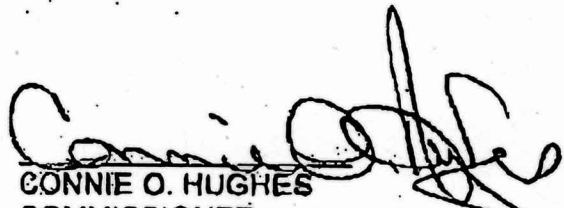
payment of the grant monies to the project developers upon OCE approval of invoiced expenses. The Board FURTHER ORDERS that the OCE Director and the Board's Chief of Staff be authorized to approve the payment of invoices when they are received and found to be in order.

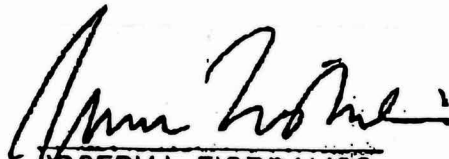
DATED: 1/25/07

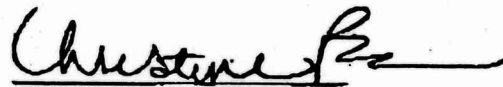
BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities.

